

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4015 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANOHARSINHJI PRADYUMANSINHJI JADEJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4015 of 1990
MR PV HATHI for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
Mr. C.C.Bhalja, ASSTT. GOVERNMENT PLEADER for
the Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 06/05/99

CAV JUDGEMENT

This petition has been filed for quashing the order dated 10th November, 1983 passed by the Deputy Collector, Rajkot in Appeal no. 185 and the order dated 24.8.82 passed by the Mamlatdar and ALT, Rajkot.

2. The petitioner was holding the lands

admeasuring 677 acres 12 gunthas out of which the land of survey no. 111/3 and survey no. 111/2 admeasuring 579 acres 27 gunthas and 30 acres and 30 gunthas of village Madhapur are bid lands i.e. uncultivable waste lands. The petitioner furnished particulars in the prescribed form regarding the land held by him. Thereupon, the Mamlatdar and ALT held an inquiry by his order dated 24.8.82 in Ceiling case no. 2 of 1976 holding that the land to the extent of 587 acres 35 gunthas was in excess of ceiling limit. The land of 51 acres was held to be retainable by the petitioner. Being aggrieved by the said order, the petitioner filed an appeal being Appeal no. 185 of 1983 before the Deputy Collector, Rajkot under section 33 of the Urban Land Ceiling Act which was dismissed by the Deputy Collector vide his order dated 10th November, 1983 and the order of the Mamlatdar and ALT, Rajkot was confirmed. The petitioner therefore, preferred a revision Application being Revision Application No. TEN B.R. 4/84 under section 34 of the said Act before the Urban Land Tribunal. The Tribunal by its order dated 8th September, 1989 allowed the Revision application in part and the land of village Madhapur was directed to be included in the total holding of the petitioner. The Rardarda land admeasuring 40 acres was also directed to be included in the holding of the petitioner. The lands of Bhomeshwar temple admeasuring 12 acres and 34 gunthas was excluded from the holding of the petitioner and the matter was remanded to the Mamlatdar and ALT, to decide the total area available to the petitioner in view of the observations made in the judgment and then to decide the surplus land. The Tribunal also directed the Mamlatdar and ALT to give 15 days' time to the petitioner to give his selection of such land.

2. Heard the learned counsel for the parties. The learned counsel for the petitioner submitted that since the land of the petitioner falls within the urban agglomeration of Rajkot under Land Ceiling Act, the Gujarat Agricultural Lands Ceiling Act is not applicable and it would be outside the area of legislative competence of the State to deal with the said land under Gujarat Agricultural Lands Ceiling Act, 1960. As such, the provisions of Gujarat Agricultural Lands Ceiling Act would not be attracted. The petitioner has already disclosed the aforesaid lands under section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 to the competent authority and the Mamlatdar and A.L.T. has dealt with the aforesaid land for the purpose of determining of the ceiling limit under Urban Land Ceiling Act. As such, the orders passed by the authorities under

Gujarat Agricultural Lands Ceiling Act, 1960 including the orders passed by the Gujarat Revenue Tribunal are null and void. The definition of words " every other description" would include the lands used for the purposes of commercial, agriculture, industrial and residence and, therefore, the lands of every other description viz. agricultural, industrial, commercial and residence situate within the urban agglomeration would be outside the legislative competence of the State under the Urban Land Ceiling Act, 1976. The learned counsel for the petitioner also placed reliance on the decision in the case of Thumati Venkaiah vs. State of Andhra Pradesh and others reported in AIR 1980 SC, 1568 and in the case of Krishna Bhimrao Deshpande vs. Land Tribunal, Dharwad reported in AIR 1993, SC, 883.

3. On the other hand, the learned Government Pleader Mr. Prashant Desai submitted that in the urban agglomeration, the land is divided in separate zones, commercial, residential, industrial zone, agricultural zone etc. The land falling in the agricultural zone under Urban Land (Ceiling and Regulation) Act will be dealt with by the Gujarat Agricultural Lands Ceiling Act, 1960 and not by Urban Land (Ceiling and Regulation) Act, 1976, and the ceiling limits prescribed by Gujarat Agricultural Lands Ceiling Act would be attracted in the present case.

4. I have given anxious thought to the submissions made on behalf of the parties. It is not disputed that the land of the petitioner is uncultivable waste land and this land falls in urban agglomeration of Rajkot. The Tribunal made an observation that the main plea of the petitioner is that the lands may be rocky and may not be available for cultivation without incurring a huge expenditure. The further observation of the Tribunal is that it is true that if the lands are acquired under the Act, such lands may not be immediately available for agriculture, but if some expenditure on the process of cultivation is made, then such land would be available for agricultural purposes, hence, the plea of the petitioner that the lands will not be available for the agricultural purpose is not acceptable. While dealing with bid land under section 3(17)(ii)(d), under which the petitioner is covered, the Tribunal has observed that the Legislature has not excluded that land which may be rocky, but allied lands as defined under the Saurashtra Estates Acquisition Act have been included as "lands". The main contention of the learned counsel for the petitioner is that the agricultural land falling under urban agglomeration would be outside the scope of the

Gujarat Agricultural Lands Ceiling Act and in my opinion, this argument has a great force in view of the aforesaid decision of the Apex Court wherein it has been held that the Parliament alone was competent to legislate with respect to ceiling on urban immoveable property and acquisition of such property in excess of the ceiling and all connected, ancilliary or incidental matters and the Andhra Pradesh Legislature stood denuded of its power to legislate on that subject. Section 2(o)(i) of the Act defines the urban land as any land situated within the limits of an urban agglomeration and referred to as such in the master plan but does not include any such land which is mainly used for the purpose of agriculture. But "agriculture" includes horticulture, but does not include raising of grass. Section 2(q) gives a definition of "vacant land" by providing that "vacant land" means subject to certain exceptions which are not material, land not being land mainly used for the purpose of agriculture, in an urban agglomeration. Section 3 is the pivotal section which imposes ceiling on urban immovable property. In the second case of Krishna Bhimrao Deshpande vs. Land Tribunal, Dharwad, the facts are that in the year 1972, Karnataka Legislature passed a resolution under Article 252 of the Constitution to the effect that imposing a ceiling on urban immoveable property and the acquisition of such property in excess of the ceiling limit for public purposes and all the matters connected therewith shall be regulated in the State by Parliament by law. The State Legislature thus divested itself of the legislative competence to enact law in respect of subject matter of the resolution. Thus, the Apex Court confirmed the principle laid down in the case of Thumati Venkaiah vs. State of U.P. (Supra) holding that it is no doubt true that if the Andhra Pradesh Act seeks to impose ceiling on land falling within an urban agglomeration, it would be outside the area of its legislative competence, since it cannot provide for imposition of ceiling on urban immoveable property.

5. In the present case, admittedly, the land of the petitioner falls under urban agglomeration for which the said Act i.e. Gujarat Agricultural Lands Ceiling Act, 1960 has been enacted by the State legislature which is outside the competence of the State legislature. As such, the provisions of Gujarat Agricultural Lands Ceiling Act, 1960 would not be applicable to the land of the petitioner which falls within urban agglomeration Rajkot. In view of this, the petition deserves to be allowed and the impugned orders are required to be quashed and set aside.

6. Accordingly, this petition is allowed.

The judgment dated 8th September, 1989 passed by the Gujarat Revenue Tribunal in Revision Application no. TEN.B.R. 4 of 1984 confirming the orders at Annexure "A" and "B" of the Deputy Collector and the Mamlatdar and A.L.T., in so far as the "bid lands" survey no.111/2 admeasuring 30 acres 30 gunthas and survey no.111/3 is admeasuring 579 acres 27 gunthas are concerned, are quashed and set aside. Rule is made absolute accordingly with no order as to costs. Interim relief, if any, stands vacated.

...

***darji